RECENT IMPORTANT DECISIONS

ATTACHMENT—ALIAS WRIT—COLLATERAL ATTACK.—One T. commenced attachment proceedings against D., a writ being issued and delivered to the Sheriff and returned by him. Later an alias writ of attachment issued against other property, no new affidavit or bond being given. The property attached under the alias writ was sold in February, 1899. In December, 1900, D. conveyed an undivided one-half interest in the property sold under the alias writ to one Childers, who with D. now brings an action to recover the property sold. *Held,* that there is no authority in this territory for issuing an alias writ of attachment, and the levy on property under such a writ gives the court no jurisdiction over such property. *Dye et al.* v. *Crary* (1904), — N. M. —, 78 Pac. Rep. 533.

The court issuing the alias writ of attachment was one of general jurisdiction, but the statute does not in express terms authorize an alias writ. The courts of the various states which have passed on the subject hold divergent views as to the issuing of alias writs of attachment when not provided for by statute, but the weight of authority seems to be in favor of the issuance of such writs. It is difficult to see why they should not issue in some cases, as, when the first writ has expired without being served or when it has been lost by the officer before being returned or when additional property belonging to the debtor has been discovered after the service of the first writ. *Elliott* v. *Stevens,* 10 Iowa 418. Contra, *Dennison* v. *Blumenthal,* 37 Ill. Ap. 385. The dissenting opinion of MILLS, C. J., was based on the ground that the granting of the alias writ of attachment was a matter of procedure and the validity of its issue could not be questioned collaterally. The question is a disputed one; many courts holding that defects in following prescribed forms are jurisdictional and sufficient to reverse the judgment in another suit. *Greenvault* v. *Farmers and Mechanics Bank,* 2 Doug. (Mich.) 498; *Heard* v. *National Bank* (1901), 114 Ga. 291. The Supreme Court of the United States holds that such irregularities cannot be questioned in a collateral attack. *Voorhees* v. *U. S. Bank,* 10 Pet. 449; *Cooper* v. *Reynolds,* 77 U. S. 308; *Needham* v. *Wilson,* 47 Fed. Rep. 97; *Darnell* v. *Mack,* 46 Neb. 740. The general principles underlying this question are discussed in an article by J. R. Rood in 1 MICH. LAW REV., 645.

ATTORNEYS—DISBARMENT—MALFEASANCE IN OFFICE.—A. was the district attorney of the Sixth Judicial District of Colorado. Charges were brought against him that he had demanded and received money to refrain from prosecuting certain persons who had violated the laws of the state. The defendant failed to appear and the charges were established by the evidence taken. *Held,* that A.'s name should be stricken from the roll of attorneys of the state of Colorado. *People ex rel. Colorado Bar Ass'n.* v. *Anglim* (1904), — Colo. —, 78 Pac. Rep. 687.

The right to disbar an attorney arises out of the fact that he is an officer of the court and amenable thereto. In general, dishonest professional con-

duct, general immorality or such act of crime or vice as may show him unfitted for the confidence reposed in him, as an attorney, will be sufficient ground for disbarment. *Ex parte Cole,* Fed. Cases No. 2973 (1 McCrary 405). It is not necessary that the offense should be indictable, but acts merely affecting moral character will not justify disbarment. *Baker* v. *Commonwealth,* 73 Ky. (10 Bush) 592. An attorney may be considered unfit to practice his profession if he conducts himself so as to bring the courts into public contempt. *In re Woolley,* 74 Ky. (11 Bush) 95. The courts have a common-law right to determine who shall practice before them, and this right is not taken away by a statute enumerating grounds for disbarment. *In re Mills,* 1 Mich. 392; *State* v. *Laughlin,* 10 Mo. App. 1; the contrary, however, has been held in *Ex parte Smith,* 28 Ind. 47; *Kane* v. *Haywood,* 66 N. C. 1; *In re Eaton,* 4 N. D. 514, 62 N. W. Rep. 597. The principal case may be distinguished from *In re Burnette,* 78 Pac. Rep. 440, reported in 3 MICH. LAW REV., 232, by the fact that in that case (where the accused failed to appear) there was disbarment without evidence, while in this case evidence was introduced which established the accusations.

CHATTEL MORTGAGES—LIABILITY OF MORTGAGEE FOR SELLING MORE PROPERTY THAN ENOUGH TO SATISFY DEBT.—Defendant in error gave to plaintiff in error a chattel mortgage on certain property to secure a debt. When plaintiff in error foreclosed the chattel mortgage, he received, from the sale of the property, several hundred dollars more than enough to satisfy his claim. This excess, however, he failed to turn over to defendant in error, whereupon the latter brought action for conversion. *Held,* that plaintiff in error had a right to sell a sufficient amount of the property to pay his chattel mortgage and reasonable costs, but that having sold a greater amount, he was liable for conversion. *Skow* v. *Locke* (1904), — Neb. —, 101 N. W. Rep. 340.

In arriving at its decision, the court follows *Omaha Auction & Storage Co.* v. *Rogers,* 35 Neb. 61, 52 N. W. 826. The same principles were adhered to in *Griswold* v. *Morse,* 59 N. H. 211, where the court held that a mortgagee is liable for conversion when he sells a part of the mortgaged chattels after having already sold sufficient to pay the debt and costs. To the same effect are *Thompson* v. *Currier,* 24 N. H. 237; *Hutchins et al.* v. *King,* 1 Wall. 53; *Stromberg* v. *Lindberg,* 25 Minn. 513. *Contra, Ingalls* v. *Vance,* 61 Vt. 582, 18 Atl. 452. However, the fact that more of the mortgaged property is sold than is sufficient to satisfy the debt will not make the sale void. *Keating* v. *Hannenkamp,* 100 Mo. 161, 13 S. W. 89. When upon the exercise of a power of sale, contained in a chattel mortgage, there remains unsold some of the mortgaged property over and above that which was sufficient to satisfy the mortgage debt, there is an implied agreement that the part so unsold shall be turned over to the mortgagor. *Kohn et al.* v. *Dravis,* 94 Fed. 288, 36 C. C. A. 253. The mortgagee holds the unsold property for the mortgagor and is bound to surrender it to him on demand, but the mortgagee is not bound to return the unsold property to the premises of the mortgagor. *Campbell* v. *Wheeler,* 69 Ia. 588, 29 N. W. 613. In case only a part of the mortgaged property is sold and the net amount realized from the sale is not sufficient to